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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Earl Felton Crago, Jr.,
Petitioner,

vs.

Charles L. Ryan, et al.,
Respondents.

No. CV-11-2368-PHX-SMM (JFM)

**MEMORANDUM OF DECISION AND
ORDER**

Pending before the Court is Magistrate Judge James F. Metcalf's Report and Recommendation advising this Court that Defendants Clark and Jorgenson be dismissed without prejudice from Plaintiff's Second Amended Complaint. (Doc. 82.) Petitioner has filed no objections to the Report and Recommendation. The Court will affirm Judge Metcalf's Report and Recommendation.

STANDARD OF REVIEW

When reviewing a Magistrate Judge's Report and Recommendation, this Court must "make a de novo determination of those portions of the report . . . to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); see also Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991) (citing Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983)). Failure to object to a Magistrate Judge's recommendation relieves the Court of conducting de novo review of the Magistrate Judge's

1 factual findings; the Court then may decide the dispositive motion on the applicable law.
 2 Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979) (citing Campbell v. United States
 3 Dist. Court, 501 F.2d 196 (9th Cir. 1974)).

4 By failing to object to a Report and Recommendation, a party waives its right to
 5 challenge the Magistrate's factual findings, but not necessarily the Magistrate's legal
 6 conclusions. Baxter, 923 F.2d at 1394; see also Turner v. Duncan, 158 F.3d 449, 455 (9th
 7 Cir. 1998) (failure to object to Magistrate's legal conclusion "is a factor to be weighed in
 8 considering the propriety of finding waiver of an issue on appeal"); Martinez v. Ylst, 951
 9 F.2d 1153, 1156 (9th Cir. 1991) (citing McCall v. Andrus, 628 F.2d 1185, 1187 (9th Cir.
 10 1980)).

11 **DISCUSSION¹**

12 After conducting a thorough legal analysis, the Magistrate Judge concluded that
 13 Petitioner's claims against Defendants Clark and Jorgenson are subject to dismissal without
 14 prejudice for Plaintiff's failure to effect service. (Doc. 82.) The Magistrate Judge reviewed
 15 Petitioner's failure to properly serve these Defendants, as well as his failure to show good
 16 cause or excusable neglect to justify his failure. (Id. at 2-3.) Petitioner raises no objection
 17 to the Magistrate Judge's factual or legal determinations, and after review the Court finds that
 18 the Magistrate Judge properly concluded that Petitioner's failure to timely serve these
 19 Defendants justifies their dismissal without prejudice from Plaintiff's suit.

20 Therefore, the Court hereby incorporates and adopts the Magistrate Judge's Report
 21 and Recommendation. (Doc. 82.)

22 **CONCLUSION**

23 For the reasons set forth above,

24 **IT IS HEREBY ORDERED** that the Court adopts the Report and Recommendation
 25 of the Magistrate Judge (Doc. 82).

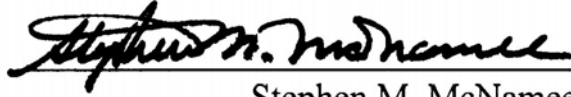
26 **IT IS FURTHER ORDERED** that Defendants Clark and Jorgenson are hereby
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28 ¹The factual and procedural history of this case is set forth in the Magistrate
 Judge's Report and Recommendation (Doc. 82).

1 **dismissed without prejudice.**

2 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment in favor
3 of Defendants and terminate this action.

4 DATED this 26th day of April, 2013.

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7 Stephen M. McNamee
8 Senior United States District Judge
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